

COUNTY OF YORK

MEMORANDUM

DATE: December 18, 2002 (BOS Mtg. 1/21/03)

TO: York County Board of Supervisors

FROM: James E. Barnett, County Attorney

SUBJECT: Resolution authorizing condemnation of vacated portion of Martiau Street

As mentioned in my memo of the same date on the subject of a vacation of a portion of Martiau Street, I believe that the Board's action in vacating the street, by itself, safely vests title of the vacated street in the County, as the owner of parcels on both sides of the street. However, in the event that the County finds its title challenged, the Board may wish to position itself so that it is prepared to institute condemnation procedures quickly, by means of the "quick take" procedures which authorize acquisition of title upon the filing of a certificate of take, so that the construction of the proposed parking facility on Water Street will not be delayed. Attached is a resolution (that has been duly advertised for a public hearing as required by applicable statutes), which, if adopted, would authorize the execution and recordation of a certificate of take in the event such proves to be necessary. It is my intention, however, not to record any such certificate unless and until such time as it becomes necessary to do so.

For your information, it has proven impossible to determine from a fairly intensive search of the County's land records who might have been the last known owner of record of the land within Martiau Street. In 1909, there were two deeds recorded, each purporting to convey land holdings which, from their descriptions, would have included tracts of property lying immediately to the west of the Nick's Seafood Pavilion building, including Martiau Street. One such deed was a quitclaim deed from the Yorktown Trustees to York Supply Corporation of all land in Yorktown "not heretofore conveyed by the Trustees of the Town of York" including, specifically, all land "between Lots 146 and 147 [where Nick's Seafood Pavilion is currently standing] and the northwesternmost boundary of the Town of York," which certainly would have included Martiau Street, but for the fact that the boundaries of Lots 146 and 147 *were* the apparent town boundaries. Also, that same year, D. M. Norton and Sadie A. Norton conveyed to Investment Corporation approximately ten acres of land which likewise began at the recognized town boundary (that is, the eastern edge of Martiau Street, including the street itself) and extending westward towards Yorktown Creek, then known as Smith's Creek. Neither corporation has existed for decades. York Supply Corporation apparently went out of business sometime in the 1920s, and we have been unable to locate any records indicating who may be the successors in interest to either corporation. Moreover, there appear to be no subsequent deeds recorded by either corporation laying claim to ownership of the street itself which, after all, had apparently already been platted as a street as shown on the so-called Hudgins plat which had been recorded a full twenty years earlier. By operation of law, therefore, it is my conclusion that title to the street, upon its vacation, is deemed to accrue to the parcels on either side, both of which are owned by the County. Nonetheless, if challenged as to title, the County will wish to be able to respond quickly and decisively by filing a certificate of take and assuring its ownership of the vacated road.

For the reasons stated above, I recommend the adoption of attached proposed Resolution R03-7.

Barnett/3340:sw
Attachment

? Resolution R03-7